

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 321 of 1999

in

FIRST APPEAL No 555 of 1983

with

LETTERS PATENT APPEAL No 322 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

DEVIBEN JAYANTILAL TALATI

Versus

ROMESHCHANDRA RAMNIKLAL TALATI

Appearance:

1. LETTERS PATENT APPEAL No. 321 of 1999
MR HM PARIKH for Appellants
MR RS SANJANWALA for Respondent No. 1

2. LETTERS PATENT APPEAL No 322 of 1999
MR HM PARIKH for Appellants

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and

MR.JUSTICE S.D.DAVE

Date of decision: 23/07/1999

C.A.V. JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

1. The first appellant in these two appeals, viz., Deviben Jayantilal Talati, filed two suits before the City Civil Court at Ahmedabad. Civil Suit No. 3941 of 1975 was filed for a declaration that a lease deed dated 3.4.1941 executed by her mother is null and void. She had also prayed for a declaration that Will executed by her father on 29.6.1959 be declared as null and void. The plaintiff sought for partition of the properties covered by these documents and claimed 1/14th share.

2. The second suit, viz., Civil Suit No.1825 of 1979, for a declaration that the adoption of the 1st defendant by Jayaben be set aside and that the 1st defendant shall be restrained from transferring the suit property and the plaintiff claimed partition of these properties and claimed 1/10th share in the property.

3. Both suits were dismissed and the plaintiff Deviben Jayantilal Talati and her mother Sumitraben and her paternal uncle's son Rohit Ratilal Talati and her brother Hasmukhbhai Jayantilal Talati, who were all arrayed as defendants in the suit, jointly filed First Appeal No.555 of 1983 against the judgment and decree in Civil Suit No.3941 of 1975 and filed F.A.No.1096 of 1983 against the judgment in Civil Suit No.1825 of 1979. Both these First Appeals were dismissed by the learned single Judge and Letters Patent Appeal No.321 of 1999 is filed against the judgment in F.A.No.555 of 1983 and Letters Patent Appeal No.322 of 1999 is filed against the judgment in First Appeal No.1096 of 1983.

4. We heard the appellant's counsel.

5. The short facts necessary for the disposal of these appeals are as follows :-

Narotamdas Bhogilal Talati is the common ancestor. He was an agriculturist as well as a businessman. He had two sons, viz., Ambalal and Gokaldas, and one daughter Jamuben. Narotamdas Bhogilal owned two items of property, one was a residential house and another a shop building, both situated in the city of Nadiad. He, along with his brother, owned an agricultural land at Narsanda Village and he had half

share in this plot, having an extent of 5 acres and 19 gunthas. Narotamdas Bhogilal died on 10.12.1927 and prior to that, he executed a Will on 2.8.1919, Exhibit 128. By this Will, he gave the northern portion of the residential house and the shop building to his son Ambalal and the southern portion of the residential house and his half undivided share in the agricultural property to his son Gokaldas. His daughter Jamuben was a widow at that time and she was given movables and ornaments. Narotamdas Bhogilal had also directed the legatees to discharge his debts. He had also directed that his funeral expenses shall be borne by his sons Ambalal and Gokaldas.

6. Ambalal was an employee in the Indian Railways between 1911 and 1942. During the year 1930, he was a Signal Inspector at Ahmedabad. During this period, his income was ranging between Rs.5,000/- and Rs.6,000/- per annum and he had been paying income tax.

7. Gokaldas was working in the Boring Department and for some period, he was attached to Bharuch Municipality and in 1922, he entered the field of contract work for boring and he started a concern, by name Ramniklal Ratilal & Sons. Ramniklal Ratilal & Sons had an office at Ahmedabad and they had entered into several boring contracts and had a flourishing business. Exhibit 268 is a booklet, giving the details of the business carried on by this concern. Gokaldas became a widower at the age of 22 and while at Bharuch, he got acquainted with a Brahmin lady, by name Manchhaben, the 4th defendant in Civil Suit No.1825 of 1979. Manchhaben continued to stay with Gokaldas till his death on 14.10.1958. In 1928, he shifted his residence to Ahmedabad and in 1930, he resigned from his service and completely engaged in the contract work.

8. The disputed property was jointly purchased by Ambalal and Gokaldas on 15.12.1930. The total consideration was Rs.8,352/-. One house and chawls were constructed during the period 1930 to 1940. Some portion of the house was given to Ambalal's daughter Vijayaben by a gift dated 30.4.1936. It was executed both by Ambalal and Gokaldas and the same was attested by Ramniklal, Ratilal and Jayantilal. The fact that the three male children of both Ambalal and Gokaldas attested this document and it was a joint deed by Ambalal and Gokaldas has been pointed out as a ground to hold that the suit property was ancestral property. Whether a property was joint family property or not is to be considered on various aspects. The appellant would contend that the

consideration paid for the purchase of this property was made out of the family funds. Two courts have concurrently found that there is no evidence to show that the income derived from the family property was used for the purchase of the suit property. The original ancestor Narotamdas Gokaldas died on 10.12.1927. His property devolved on his sons Ambalal and Gokaldas. One house and a shop room and an agricultural land at Narsanda village were alone the property left by Narotamdas. There is no evidence that the income from these properties was used for the purchase of the suit property, whereas the evidence in this case clearly demonstrates that Ambalal and Gokaldas were having sufficient income. Ambalal was working in the Railways as a Signal Inspector and he was even paying income tax those days. Gokaldas worked in the Boring Department and even while he was in service, he had been engaged in contract work, in the name and style of Ramniklal Ratilal & Sons. There cannot be any dispute that Gokaldas and Ambalal had sufficient income to purchase the suit property.

9. There is also no evidence to show that this property was treated as a joint family property. Gokaldas and Ambalal executed a Will exhibit 79 on 1.11.1940. Therein they stated that they severed joint status in respect of this property. The dispute raised by the 1st appellant-plaintiff is regarding the lease deed executed by Ambalal in favour of Gokaldas mainly on the ground that it was not for any legal necessity. Even if it is assumed that it was a joint family property, it cannot be said that the lease deed was an illegal transaction. No other coparceners had challenged the validity of this lease deed. Moreover, this property was purchased in 1930 and several buildings were constructed on this property and the lease deed was executed in 1941 and Ambalal, who executed the lease deed, died in 1943. Neither his son Jayantilal, father of the present 1st appellant, nor any of the sons of Jayantilal ever challenged the execution of the lease deed by Ambalal in favour of Gokaldas. The legal heirs of Ambalal received rent pursuant to this lease deed. Moreover, by his subsequent document, the original rent fixed at Rs.751/- was increased to Rs.1161/- and a portion of the property was acquired by the Corporation and the compensation derived from such acquisition was apportioned in accordance with the provisions made in the lease deed. All these facts would indicate that the lease deed was accepted as a genuine document and was acted upon by all the members of the family.

10. Counsel for the appellant urged that Ramniklal

Ratilal & Co., which was started in the year 1922, was, in fact, managed by Narotamdas and as Ambalal and Gokaldas were in Government service, the entire business carried on by Ramniklal Ratilal & Co. was a Hindu Undivided Family business and the suit property was purchased out of the fund derived as profit of business. We do not find any force in this contention as Narotamdas himself died in 1927 and no documents have been produced to show that he was carrying on the business of the firm Ramniklal Ratilal & Co. The learned counsel also pointed out that the fact that the property was purchased jointly by Ambalal and Gokaldas would indicate that it was a joint family property. This plea also cannot be accepted as these two brothers had been doing joint business and they had entered into several transactions jointly and the purchase of this property also could be said to be one such transaction. The counsel for the appellant also drew our attention to an endorsement made by Gokaldas on the Will executed by Narotamdas, wherein the reference has been made to the agricultural property in Narsanda. Gokaldas conceded that with his consent, Ambalal transferred this property and the amount was spent for making addition and alteration in the house belonging to Gokaldas and according to the appellants' counsel, this would indicate that Ambalal was Karta of the family during the relevant time and it is argued that there was no severance of status of joint family and if that be so, Ambalal could not have disposed of the property bequeathed by Narotamdas to Gokaldas. In view of the various transactions entered into by these two brothers, it could only be assumed that Ambalal was acting for and on behalf of his brother Gokaldas. It may be noted that in the original Will executed by Narotamdas, the northern portion of the house was given to Ambalal and the southern portion of the house was given to Gokaldas and Ambalal disposed of the property only with the consent of Gokaldas. That by itself will not prove that Ambalal was the Karta of the family and the property was joint family property.

11. Reference was also made by the learned counsel for the appellants to various letters written by the parties. The learned single Judge held that the letters addressed to Jamuben, viz., Exhibits 112 and 113, and the letters written by Ambalal, viz., Exhibits 98, 99 and 100, and the letters Exhibits 102, 103, and 104 were carefully considered by the trial Judge and it was held that they did not advance the plaintiffs' case. The concurrent findings on this aspect cannot be questioned at the second appellate stage. In the present Letters Patent Appeals, the appellants could not point out any

illegality in the finding of the learned trial Judge and the learned single Judge. The appellants' counsel also could not point out any substantial question of law arising out of the finding of fact that the lease was validly executed by Ambalal in favour of Gokaldas. As there is a concurrent finding by two courts that the lease deed was validly executed the plea of the appellants has to fail.

12. The next contention is regarding the adoption of the 1st defendant by the widow of Ramniklal. The plaintiff-appellant had contended that Jayaben had not validly adopted the 1st defendant Ramesh and that she had no authority to adopt on behalf of her deceased husband. This also is a finding of fact by two courts. The evidence adduced by the parties was considered in detail. There was also evidence to show that Jayaben was staying at Bombay and after adoption, Ramesh shifted his residence to Bombay and he studied at Bombay and appeared for the annual examination held in May, 1945. On account of his ill-health, he had to return to Ahmedabad, and he pursued his studies in Ahmedabad till he passed S.S.C. examination in 1954. He joined the F.Y. Science at Vallabh Vidyanagar and later, came to Ahmedabad and joined St. Xavier's Science College. His marriage was performed in 1960. Of course, in the invitation card, his natural father's name was shown as the father and it was explained that there was no other elderly male on the side of the family of Jayaben. There is also evidence to show that the 1st defendant was not having cordial relations with Manchhaben as there were some litigations. The 1st defendant also was not having very cordial relationship with his brother Rohit. The evidence on the side of the plaintiff was disbelieved by the trial court. It was held that there was no evidence to show that pressure was exerted on Jayaben to adopt the 1st defendant Ramesh. The trial court pointed out that evidence of Manchhaben, Sumitraben, Anandrao and Rohitbhai could not be relied on fully for various reasons as they were not having good relations with the 1st defendant Ramesh. Therefore, the fact that the 1st defendant was adopted by Jayaben was proved by satisfactory evidence and being a Hindu widow, she was entitled to adopt a son. The photographs, which were allegedly taken at the time of the adoption, were also produced by the respondents, and the same were also relied on by the trial court. Exhibit 225 was a deed executed by Jayaben and it was attested by Gokaldas and some other parties. This document would also show that adoption had, in fact, taken place. The appellant-plaintiff could not point out any illegality in

the adoption made by Jayaben as per Exhibit 225. Both the courts have concurrently found that adoption was valid and legal.

13. The two courts have found that the lease deed executed by Ambalal in favour of Gokaldas was in respect of the self-acquired property and the lease deed was valid and binding on the parties. The courts below have also found that the adoption of Ramesh made by Jayaben was valid. The appellants' counsel could not point out any error or illegality and we also do not find any substantial question of law involving in these proceedings. Therefore, the Letters Patent Appeals arising out of these proceedings have only to be dismissed. These Letters Patent Appeals are dismissed, however, with no order as to costs.

Counsel for the appellants prayed that the parties may be directed to maintain status quo. We do not find any necessity to issue such direction. The prayer is declined.

23rd July, 1999 (K.G. Balakrishnan, C.J.)

(S.D. Dave, J.)

(apj)